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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,537	10/12/2001	Charles R. Fuller	PGI6044P0640US	1519
7590	03/15/2004		EXAMINER	
Wood, Phillips Katz, Clark & Mortimer Suite 3800 500 West Madison Street Chicago, IL 60661-2511			RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 03/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,537

Applicant(s)

FULLER ET AL.

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,7 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,7 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendment and accompanying response filed January 8, 2004. The rejections in view of Everhart et al. (US 5,801,107) and Marmon et al. (US 6,200,669) have been overcome.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 8, 2004, has been entered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 4, 6, 7, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 1 and 11, it is unclear to the Examiner what is meant by a "homogeneous fibrous batt formed of...a blend of cotton fibers and synthetic fibers." According to *Merriam Webster's Collegiate Dictionary*, 10th Edition, homogeneous is defined as "of the same or

a similar kind or nature or of uniform structure or composition throughout." Therefore, it is unclear to the Examiner how the nonwoven fabric of the present invention can comprise a homogenous fibrous batt formed of a blend of cotton AND synthetic fibers.

Claim 4 recites the limitation "staple fibers" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The remaining claims are rejected as being dependent upon a rejected independent base claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, 6, 7, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renjilian (US 4,569,883) in view of Everhart et al. (U 5,801,107).

Renjilian disclose paper machine clothing comprising a layer of non-woven staple fibers such as synthetic polyester fibers and natural fibers and blends thereof (col 6, ln 54-61). The fabric is integrated and consolidated into a single uniform fabric by needling. There is a consolidation through entanglement of the fibers. This entanglement stabilizes the structure so that there is a homogeneous stable fabric structure. The fabric is needled on both sides (col 7, ln 66-68 to col 8, ln 1-18). With regard to claim 6, it should be noted that the method of forming the article is not germane to the issue of patentability of the article itself. Therefore, this limitation has not been

given patentable weight. With regard to claim 7, the fabric is impregnated with a surfactant (col 7, ln 8-39). Renjilian disclose the claimed invention except for the teaching that the fabric is entangled by application of hydraulic energy in the range of about 0.027 to 0.046 hp-hr/lb and the specific teaching that the nonwoven fabric has a highly entangled outer surface regions and a light entangled inner core region position between said highly entangled outer surface regions.

Everhart et al. disclose a liquid transport material that is hydraulically needled into a nonwoven fibrous structure (abstract). The synthetic fibers used may be polyester and the natural fibers include cotton (col 8, ln 3-8). The nonwoven fibrous web may be hydraulically entangled at 0.001 to 0.03 hp-hr/lb (col 8, ln 32-35). It would have been obvious to one having ordinary skill in the art to have used Everhart's rate of hydraulic entanglement on the fabric of Renjilian, motivated by the desire to create an integrated fabric without the presence of binder.

Although Renjilian and Everhart et al. do not explicitly teach the claimed highly entangled outer surface region and lightly entangled inner core region, it is reasonable to presume that this varying degree of entanglement is inherent to Renjilian's and Everhart's invention. Support for said presumption is found in the use of like materials (i.e. an entangled nonwoven fabric made of the same fibers) and the use of like processes (i.e. hydraulically entangling on both sides of the web at the same energy, 0.001 to 0.03 hp-hr/lb). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a highly entangled outer surface region and lightly entangled inner core region would obvious have been present once the Renjilian and Everhart et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

With regard to claim 11, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). As a result, the phrase "a cast padding material" has not been given any patentable weight. Therefore, because the article produced by the combination of Renjilian and Everhart article is a hydraulically needled nonwoven fibrous structure made of the same fiber materials as Applicant's invention, the claim limitations have been met.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 4, 6, 7, and 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR

UCL

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Ula C. Ruddock
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